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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,313	07/07/2003	Harri Pekonen	04770.00116	8267
22907 7590 07/25/2007 BANNER & WITCOFF, LTD. 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051			EXAMINER HUYNH, CHUCK	
			ART UNIT 2617	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/614,313

Applicant(s)

PEKONEN, HARRI

Examiner

Chuck Huynh

Art Unit

2617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). *request for consideration*
7. ☒ For purposes of appeal, the ~~proposed amendment~~ *request for consideration* (s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-24.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


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Continuation of 11. does NOT place the application in condition for allowance because: Regarding claims 1, 18 and 24, the use of an "if-statement" is non-limiting language; it opens the claim to two scenarios and since the claim only specifies what happens in one scenario, the other scenario is met when the "if-statement" is not satisfied, rendering the rejection of the claims valid and to have encompassed all limitations set out by the claim language. Examiner had offered suggestions in how to rectify this matter in the previous office action dated 2/8/2007.

Regarding independent claim 1, since the argued feature is part of the "if-statement" which does not have to be satisfied, the feature was not necessary to the operation of claim 1, as claimed.

Regarding claim 18, Applicant argues that nothing in Willenegger discloses base stations broadcasting bursts of data. and that the invention of Willenegger is different from those of point-to-point communication services (such as voice and packet data). Examiner would like to explain that data bursts in telecommunications refers to a communication of data with a high transmission rate, and in Willenegger the communication between the mobile station and base station [0024] can be of a high data rate of transmission [0138]. Furthermore, the invention of Willenegger is directed for communication services such as voice, and packet data [0126], [0139].

Regarding claim 20, Applicant argues that Strawczynski does not disclose "determining a variable forward error correcting code that provides a desired degree of robustness corresponding to the service...." Examiner would like to point out that "...a desired degree of robustness correspond to the service" is a broad statement. Furthermore, Strawczynski does disclose the use of FEC codes (e.g. convolutional codes or Viterbi decoders). Due to the broadness of the claim, a variable forward error correcting code which that provides a desired degree of robustness corresponding to the service is used to prevent loss of data during a conventional handover is disclosed by Strawczynski wherein the FEC coding is applied in variable techniques: Col 4, lines 28-31).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, It would have been obvious to one ordinarily skilled in the art at the time of invention to incorporate Frodigh's disclosure to provide a more desired degree of robustness to accommodate the increase number of users by decreasing interference (Col 2, lines 55-66).